systems, daily newspapers, weekly newspapers, magazines, yellow pages, direct mail, billboards and the Internet. As early as 1991, the FCC staff recognized that advertising alternatives to the video market include not only radio and newspapers, but also "magazines, direct mail, yellow pages, and outdoor advertising." See OPP Working Paper No. 26, Broadcast Television In A Multichannel Marketplace, DA 91-817, 6 FCC Rcd. 3996, 4083 (1991). Tribune is resubmitting an updated expert economic analysis from Roger D. Blair, a Professor of Economics at the University of Florida, originally done in August 1996, demonstrating that the relevant product market includes advertising revenues from broadcast stations, cable systems, newspapers, magazines, yellow pages, direct mail, billboards and the Internet. See Report of Roger D. Blair, Attachment 2, at 10 ("Blair Report"). The Blair Report also demonstrates that the relevant geographic market for the analysis of the impact of Tribune's ownership of WBZL and the Sun-Sentinel includes Dade, Broward and Palm Beach counties. Blair Report at 22-25.[43]

The Blair Report notes that while the actual advertising revenue numbers may have changed since his August 1996 analysis, nothing has come to his attention suggesting that the qualitative analysis he performed is inappropriate today or that the numerical relationships he identified are materially different. Professor Blair's analysis of advertising revenue allocations in the South Florida market confirmed what is detailed above, namely that the market is competitive and that Tribune's ownership of WBZL and the Sun-Sentinel will not impede competition. See Blair Report at 25-30. Out of a total of more than $2 billion spent on

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[43] Professor Blair also separately analyzed statistics for Broward and Dade Counties, excluding Palm Beach County which is in another DMA. As demonstrated in the report, the exclusion of Palm Beach County does not significantly impact the HHI calculations reported.

advertising in 1995 in the South Florida market, only 1.642 percent of those dollars was spent with WBZL and 12.336 percent of those dollars was spent on the Sun-Sentinel publications. Id. at Exhibit H. Excluding figures from Palm Beach County, WBZL earns 2.154 percent of advertising revenues in Dade and Broward counties, while the Sun-Sentinel publications earn 12.509 percent of advertising revenues in those two counties. Id.

The Herfindahl-Hirschman Index ("HHI") calculations similarly reflect an unconcentrated market both before and after Tribune's ownership of WBZL is accounted for. The HHI is used by the Department of Justice ("DOJ") and the Federal Trade Commission ("FTC") to measure concentration in a market. The HHI for all relevant advertising dollars in the South Florida market was 841 and only rose 40 to 881 after Tribune's acquisition of WBZL. Id. at 26. Even if only broadcast station, cable system and newspaper advertising revenue is considered, the HHI was 832 and only rose 80 points to 912 after Tribune's acquisition of WBZL. Id. at 27.[44] These HHI figures reflect an unconcentrated market, with a change produced by Tribune's ownership of WBZL and the Sun-Sentinel that does not result in statistical evidence of market power.

If, however, the Commission were to accede to the narrower, media-specific definition of the relevant advertising market adhered to by the DOJ, the decision to

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[44] Even if Palm Beach County statistics were eliminated, the HHI for the broad advertising market in Dade and Broward counties was only 994, and rose 54 to 1048. See Blair Report at 27. For these two counties, considering only broadcast station, cable system and newspaper revenue, the HHI was only 1098, and rose 107 to 1205. Id. at 28. As Professor Blair's report demonstrates, neither of these HHI figures raises competitive concerns under traditional antitrust analysis. Id.

eliminate or liberalize the Rule would be even easier. The DOJ -- which shares principal responsibility for enforcing the nation's antitrust laws -- has repeatedly taken the position that each type of media comprises its own market for purposes of assessing competition for advertising revenue. For example, at the DOJ's urging, a District Court recently held that "local daily newspapers compete with each other, not the other media, which are not reasonably interchangeable for the same purposes." Community Publishers, Inc. v. Donrey, 892 F. Supp. 1146, 1156 (W.D. Ark. 1995); see also Times-Picayune Publ'g Co. v. United States, 345 U.S. 594, 611-12 & n.31 (1953) (defining the relevant advertising market to be newspaper advertising, as distinct from "other mass media"); Community Publishers, Inc. v. DR Partners, 139 F.3d 1180, 1184 (8th Cir. 1998) (affirming district court's decision to limit product market to local daily newspapers).[45] More recently, then Acting Assistant Attorney General Joel I. Klein reaffirmed the DOJ's media-specific definition of the relevant advertising market in antitrust cases: "Given the differences between the various media and the way they are looked at, or listened to, as well as the differences in prospective customers -- young, old, have cable, don't -- a claim of perfect (or even close to perfect) substitutability across different media simply isn't convincing." DOJ Analysis of Radio Mergers, Address by Joel I. Klein, Feb. 19, 1997 at ANA Hotel, Washington, D.C. (emphasis added).

[45] Similarly, courts have held that other media form their own advertising markets. See, e.g., Ad-vantage Tel. Directory Consultants, Inc. v. GTE Directories Corp., 849 F.2d 1336, 1342 (11th Cir. 1987) (affirming jury's finding that yellow pages advertising is unique and is not interchangeable with other forms of advertising, such as newspapers, magazines, or business publications); Omni Outdoor Adver., Inc. v. Columbia Outdoor Adver., 891 F.2d 1127, 1140-42 (4th Cir. 1989) (affirming district court's finding that billboard advertising market was distinct from newspaper, television, and radio markets), rev'd on other grounds sub nom., City of Columbia v. Omni Outdoor Adver., Inc., 499 U.S. 365 (1991).

If the Commission were to follow the DOJ's lead in defining the relevant advertising market, the elimination or liberalization of the Rule would not implicate any competitive concerns because, according to the DOJ's position, advertisers do not consider television stations and local daily newspapers to be interchangeable media for purposes of advertising. Thus, the common owner of a television station and a local daily newspaper in the same geographic area would be unable to exert advertising market power because its media properties compete in totally separate markets.

In sum, the South Florida media market has: (1) significant newspaper competition; (ii) high cable penetration; (iii) intense competition among over-the-air television stations owned by large, well-financed group owners; (iv) several large radio station group owners and a wide variety of radio formats; and (v) significant Internet penetration. The suggestion that Tribune's common ownership of WBZL and the Sun-Sentinel poses a meaningful threat to competition in this market clearly fails.

VI. EVEN IF THE COMMISSION CHOOSES TO RELY ON DIVERSITY INTERESTS IN REVIEWING THE RULE, IT MUST AT LEAST LIBERALIZE THE RULE OR ITS WAIVER POLICY IN THE LARGEST MARKETS

Despite the statutory language directing it to focus on competition, should the Commission nonetheless decide to review the Rule based on its diversity concerns, it must still act to liberalize the Rule or its related waiver policy in the largest media markets. As demonstrated more fully below, the Commission's key diversity policy underlying the Rule -- the preservation and enhancement of viewpoint diversity in local news and public affairs programming -- is no longer served by the Commission's mechanical, near absolute, prohibition of newspaper-television combinations, especially in the largest markets where the number of media outlets and level of competition has dramatically increased since the Rule was adopted nearly 23 years ago.

A. The Commission's Only Appropriate Diversity Interest is in Programming Diversity, not Ownership Diversity.

Among the questions posed in the NOI is what type of "diversity" should be the Commission's focus. NOI, ¶ 6, Separate Statement of Commissioner Powell. Tribune submits that the FCC's only legitimate diversity interest is in assuring programming diversity. Accordingly, any attempt to regulate ownership must be based on a clear, empirical link between the particular ownership restriction and the programming received by the viewing or listening public; absent such a link, the FCC has no independent interest in who owns particular media outlets.

The Commission's asserted interest in diversity is based on its interpretation of the Federal Communications Act's directive that the Commission regulate broadcast in the "public interest, convenience, and necessity." 47 U.S.C. § 309(a). However, the use of the words "public interest" in a regulatory statute "is not a broad license to promote the general public welfare;" rather, these words "take meaning from the purposes of the regulatory legislation." NAACP v. Federal Power Comm'n, 425 U.S. 662, 669 (1976). Consonant with the underlying purpose of the Communications Act, the Commission's ownership regime has always been explicitly tied to the impact of ownership on viewpoint diversity in programming. Thus, when the

Supreme Court originally upheld the Rule, it did so on the basis that "the Commission acted rationally in finding that diversification of ownership would enhance the possibility of achieving greater diversity of viewpoints." FCC v. NCCB, 436 U.S. at 796. Similarly, the majority in the Supreme Court's decision in Metro Broadcasting focused on the fact that the FCC's minority ownership policies were intended "to promote programming diversity" and found that the minority preference at issue was permissible in part because "[t]he FCC has determined that increased minority participation in broadcasting promotes programming diversity," Metro Broad., Inc. v. FCC, 497 U.S. at 566, 569. The dissent in Metro Broadcasting also focused on the FCC's intent to encourage programming diversity but found that the Commission's showing was inadequate to demonstrate "the existence of a tightly bound `nexus' between the owners' race and the resulting programming," id. at 626 (O'Connor, J., dissenting). These opinions illustrate that diversity of ownership standing alone is not a legitimate Commission interest.

In a recent ruling that favorably quoted the Metro Broadcasting dissent, the D.C. Circuit struck down the Commission's application of its EEO policy, directed at encouraging minority hiring, to the owner of an AM-FM combination. Lutheran Church-Missouri Synod v. FCC, 141 F.3d 344, 356(D.C. Cir. 1998). The Court confirmed that the Commission's only legitimate interest was "communication service" or "programming" and struck down the EEO Policy because the Court failed to find a sufficient link between the FCC's "broad employment regulation and the Commission's avowed interest in broadcast [programming] diversity." Id.

In light of the changes in the media marketplace and the likelihood that those changes will lead to a more demanding standard of judicial review than applied under Red

Lion, Tribune submits that the linkage between ownership diversity and programming diversity will similarly need to be stronger and more developed than the Commission has previously established. As discussed below, the Rule's exclusive focus on preserving ownership diversity no longer enhances the diversity of viewpoints in programming received by the public.

B. The Commission Has Itself Recognized that Its Broadcast Ownership Rules Are Structural Rules Designed to Ensure Diversity of Viewpoints in Programming.

The cases discussed above are entirely consistent with the Commission's past pronouncements on the purpose of maintaining ownership diversity. The Commission itself has consistently recognized that all of its broadcast ownership rules, including the newspaper-broadcast cross-ownership rule, are indirect, structural measures aimed at "ensuring diversity of viewpoints in the material presented over the airwaves." Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rulemaking, ("Television Further Notice") 10 FCC Rcd. 3524 ¶ 57 (1995). While the Commission may have recognized other diversity concepts, such as ownership and source diversity that it believed lead to enhanced programming diversity, these other diversity concepts are only subsidiary tools designed to create or enhance the ultimate goal of programming diversity.

The discussion of diversity in the NOI reflects some confusion on this crucial issue. While the NOI seems to recognize that diversity of viewpoints in programming "is the other important part of the Commission's public interest mandate," the NOI indicates that "[o]ur diversity analysis focuses on the ability of broadcast and non-broadcast media to advance the three types of diversity (i.e., viewpoint, outlet and source) that our broadcast ownership rules have attempted to foster." NOI ¶ 6.[46] Contrary to the implicit suggestion in this passage, as discussed above, outlet and source diversity are not separate, independent policy objectives but are instead subsidiary concepts designed to ensure diversity of viewpoints in the programming material presented to the public.

The Commission undertook an extensive review of the history of its diversity policies in the Television Further Notice. At the very outset of that review, the Commission confirmed that its traditional diversity goal was to ensure "diversity of viewpoints in the material presented over the airwaves." 10 FCC Rcd. at 3547, ¶ 57. The Commission observed that it had used both direct and indirect methods to ensure this diversity objective.

The direct method involved regulations and policies specifically designed to encourage the provision of certain types of programming to the public. Id. ¶ 58 (citing various programming statements and guidelines typically applied by the Commission in considering license renewal applications).[47] The Commission noted that its indirect method used structural rules,

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[46] The NOI then attempted to explain the three concepts: "[v]iewpoint diversity refers to the helping to ensure that the material presented by the media reflect a wide range of diverse and antagonistic opinions and interpretations. Outlet diversity refers to a variety of delivery services (e.g., broadcast stations, newspapers, cable and DBS) that select and present programming directly to the public. Source diversity refers to promoting a variety of program information producers and owners." Id.

[47] Ironically, in a conclusion that Tribune submits is entirely appropriate for the outcome of this proceeding reviewing the continued appropriateness of the Rule, the Commission noted that the direct technique for regulating viewpoint diversity had "fallen out of favor" due to "changes in the marketplace -- chiefly the large increase in the number of broadcast stations and in competition with broadcasting -- and to heightened concern over First Amendment issues." Id. ¶ 59.

including its broadcast ownership rules "limiting the number of stations that a person can own on both the national and local levels and those limiting the ownership interests that broadcasters may have in other media." Id. ¶ 60 (emphasis added). These structural rules, the Commission observed, "are intended to assure that information is dispensed from 'diverse and antagonistic sources.'" Id. (quoting Associated Press v. United States, 326 U.S. 1, 20 (1945)).

The Commission then confirmed that its indirect attempt to ensure viewpoint diversity led the Commission to promote two other kinds of diversity, outlet and source diversity, that the Commission regarded as important to ensuring "the ultimate goal of providing the public with a variety of viewpoints." Id. ¶ 61. Importantly, the Commission also acknowledged in the Television Further Notice that it was possible to maintain or enhance programming diversity without satisfying the two ancillary objectives of source or outlet diversity: "there is information to suggesting that it may be possible to have a decrease in outlet [ownership] diversity without a corresponding decrease in viewpoint diversity." Id. ¶ 62.[48]

The Commission has recognized these same principles in other contexts as well. In liberalizing its one-to-a-market rule waiver policy, the Commission noted that its broadcast ownership rules limited the number of outlets any single entity or individual could own

[48] Then-Chairman Hundt reiterated this conclusion in a speech presented to the American Bar Association: "Structural rules promoting outlet and source diversity, however, do not necessarily give us either voice or program diversity." 1996 FCC Lexis 1504, 3. Chairman Hundt went on to acknowledge that two of the Commission's rules designed to promote source and outlet diversity, the fin/syn and Prime Time Access rules, "were at best not working, and at worst were actually counterproductive" to the Commission's ultimate objective of promoting program or viewpoint diversity. Id.

"so as to foster viewpoint diversity." Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules, Second Report and Order, 4 FCC Rcd. 1741, ¶ 16 (1989). It then confirmed "that diversity of ownership [i.e. outlet diversity] per se is not an end in itself. Rather the Commission has encouraged diversity of ownership simply as a means to achieve the public interest goal of promoting diversity of viewpoints." Id. ¶ 16. In adopting a liberalized waiver policy, the Commission recognized that a decrease in ownership diversity could actually enhance local news and public affairs programming diversity: "the joint ownership of two or more media outlets in the same market does not necessarily lead to a commonality of viewpoints by those outlets. . . . we conclude that relaxing the cross-ownership rule should not significantly affect diversity of viewpoints and should further programming and other public interest goals." Id. 1744, ¶ 18.

In an earlier notice proposing to modify the so-called "seven station rule" that limited the number of AM, FM or TV stations a single entity could own nationally, the Commission similarly acknowledged that "[a]n issue which is fundamental to the Commission's consideration of diversity is the relationship between diversity of ownership and diversity of viewpoint . . . [w]hile all rules limiting ownership tend to increase the total number of owners, such rules do not necessarily guarantee greater diversity of program content or advance the welfare of individual viewers." Amendment of Sections 73.35, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Notice of Proposed Rule Making, 95 F.C.C.2d 360, ¶ 58 (1983) (internal quotation marks omitted).[49] The Commission decided to liberalize the "seven station rule" in part due to finding that less ownership diversity increased viewpoint diversity: "[t]he fact that such diversity of viewpoint in local news reporting and in editorializing on local issues exists alongside a group or network ownership structure means that it is indeed possible to have greater viewpoint diversity than there is ownership diversity." 1984 Multiple Ownership Report, Report & Order, 100 F.C.C. ¶ 52 (1984). Thus, to the extent the Commission considers its diversity objectives in determining whether to maintain the Rule and its related waiver policy in its current form, it must consider the impact of the Rule and its related waiver policy on viewpoint diversity in programming received by the public, not whether the Rule furthers the ancillary interests of outlet or source diversity.

The Television Further Notice also provided further guidance regarding the Commission's diversity interests. Specifically, the Notice confirmed that the type of programming the Commission is concerned with in its diversity analysis is local news and public affairs programming:

> When we talk about diversity, we generally are referring to diversity in the presentation of news and public affairs programming. While diversity of entertainment formats and programming is desirable, we have traditionally left it to marketplace forces to determine their appropriate availability and mix.

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[49] The Commission observed that before it could determine if greater programming diversity resulted from promoting ownership diversity, an "examination of the costs which the rules impose" must be performed. Id. at 394. As detailed more fully below, the costs imposed by the Rule and its waiver policy have stifled the development of enhanced programming diversity, especially the development of new and/or enhanced local television news programming.

Television Further Notice ¶ 66 n.93. The Commission reiterated this conclusion later in its diversity discussion, noting that "our core concern with respect to diversity is news and public affairs programming especially with regard to local issues and events." Id. at 3557, ¶ 72.[50]

This observation is also instructive to the Commission's analysis of the Rule in this proceeding. In demonstrating that the continuation of the Rule and its waiver policy will enhance the diversity of viewpoints in programming received by the public, the Commission must show that the Rule will enhance local news and public affairs programming diversity. As demonstrated below, this is something the Commission cannot do, especially in the largest markets where the number of stations and level of competition has increased dramatically since the Rule was adopted.

C. The Rule and Its Related Waiver Policy's Absolute Focus on Maintaining Ownership Diversity Does Not Ensure Diversity of Viewpoints in Programming, Especially Local News and Public Affairs Programming.

The Rule -- which essentially exalts the preservation of ownership diversity over any other fact or circumstance -- cannot be justified in today's largest media markets by the Commission's interest in preserving or enhancing the diversity of viewpoints in programming,

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[50] The Commission has repeatedly recognized that news and public affairs programming is the type of programming that its multiple ownership rules were designed to encourage. See, e.g., Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules, Second Report and Order, 4 FCC Rcd. 1741, 1748, ¶ 55 (1988) (noting argument that increased group ownership "will enhance programming diversity, especially with regard to the type of programming that the multiple ownership rules were intended to encourage -- news, public affairs, and non-entertainment programming").

especially local news and public affairs programming. Despite the Commission's gratuitous assertion that "[p]romoting diversity in the number of separately owned outlets has contributed to our goal of viewpoint diversity by assuring that the programming and views available to the public are disseminated by a wide variety of speakers," NOI ¶ 4, today's marketplace realities tell a different story.

1. Maintaining Ownership Diversity By Itself Does Not Enhance Local Programming Diversity.

The Commission's bald assumption that maintaining ownership diversity enhances local programming diversity, especially local news and public affairs programming diversity, ignores today's marketplace realities. As illustrated by the market circumstances facing Tribune's station in Miami, several other factors wholly independent of ownership diversity are far more significant in determining whether a station will make new local news programming available to a market. In order to continue to encourage local news and public affairs programming diversity, the Commission needs to recognize these other factors and liberalize the Rule or its related waiver policy by permitting diversity-enhancing newspaper-television combinations.

At the time Tribune acquired WBZL the station was actively considering the possibility of starting a new local newscast. In so doing, the station faced some sobering market facts -- namely the significant entry barriers. First, the start-up capital costs for a new thirty-minute news broadcast were staggering -- estimated at approximately \$1.5 to \$2 million. Included in these estimates were costs for edit and post production facilities (\$280,000); a fully equipped ENG truck ($200,000); a microwave repeater site to bring live news stories into the station ($250,000); an engineering and playback control and studio upgrade ($500,000); and six video cameras and accessories ($500,000). In addition to the initial capital costs, the station also needed to fund an annual operating budget of approximately $2 million to cover wage and fringe benefit costs of its new news employees as well as the costs of various news services.

Second, even assuming the station had the capital to launch the newscast, there was no guarantee of success. The station faced an extremely competitive news market with six different local television newscasts -- four of which were on the VHF affiliates of the top-four national networks. These local newscasts, which were established, successful and backed by well-financed operators including General Electric/NBC, Post-Newsweek, Sunbeam, Westinghouse/CBS and Telemundo, made the economics of the new newscast even more daunting. Any new newscast on WBZL faced an even greater challenge to establish an identity with local viewers and begin to produce meaningful ratings -- a crucial event in any successful local news launch as it marks the point when advertiser revenues begin to offset the broadcast's operating and capital costs.

Rather than make the enormous capital commitment needed to launch a new newscast in these circumstances, WBZL (prior to becoming a Tribune station) contracted with the local NBC owned and operated station for production of a news broadcast. The thirty-minute, 10 p.m. news broadcast features on-air talent and stories generated by the NBC station's news department. Thus, while WBZL has provided additional news programming to its viewers, its newscast does not provide a new source of television news in Miami because it is created and produced by the NBC station that already produces several local newscasts of its own.

The situation faced by WBZL and the news programming agreement it ultimately signed are not unique. Tribune estimates that there are similar arrangements in 10-15 other television markets around the country -- not counting any news broadcasts produced among the estimated 78 television Local Marketing Agreements in existence where the second station's entire broadcast day is programmed by another station in the market. While the terms of these arrangements vary, the one constant is that -- contrary to the Commission's interest in encouraging new local news programming -- the over-the-air viewers in the market do not receive a new source of local television news programming. For many of the newer UHF stations, the alternative to a news programming agreement like WBZL's (or an LMA or time brokerage agreement that includes a news broadcast) is no local newscast at all. As noted above, only one of the seven UHF stations in the Chicago and Miami DMAs that signed on after the Rule was adopted produces its own local newscast and that broadcast, on Barry Diller's WAMI in Miami, started only in June of this year.

The advent of these local news programming agreements, and the number of UHF stations across the country that broadcast no local news programming, reflect several important factors ignored by the Commission's current waiver policy. First, as noted above, there has been a significant increase in the number of UHF stations since the Rule was adopted in 1975. At that time, there were 192 commercial UHF stations. At the end of 1997, by contrast, there were 619 commercial UHF stations, representing a 300 percent increase.

Second, these UHF stations are in significantly different economic and competitive positions than the traditional VHF stations the Commission had in mind when it adopted the Rule. WBZL's circumstances are a case in point. Each of the four VHF network affiliates has a long-standing history with Miami viewers with operations having commenced in 1949, 1956, 1961 and 1967 respectively. By contrast, WBZL signed on Channel 39 as an independent station in 1982. By that time, competition from the cable industry had significantly developed and Miami's viewers had multiple video programming channels to choose from. WBZL had no established viewing pattern to rely on and more importantly, the efficiencies available to the cable industry have enabled the national cable networks to siphon off some of the traditional programming used by independent stations, such as first-run movie packages, to attract audiences.

Third, in Miami and most other large markets, local television news competition is already intense. Each of the affiliates of NBC, CBS and ABC typically have established local news departments producing multiple hours of local news programming daily. Fox, for its part, has been pushing its affiliates to start local news operations for several years and most of its major market affiliates now do so. These competing local news operations make a successful local news launch even more difficult.

The competition from the cable industry for audience share and programming and the presence of well-established local television news operations combine to put the enormous costs of starting a new local news broadcast beyond the capacity of many of these newer UHF stations -- who must also plan to invest in digitial television technology. Many of these stations are affiliates of short-lived new networks, face high syndicated program costs, and lack the cash flow or resources to support the start-up of a local news broadcast.

As one commentor observed in an earlier proceeding, "the Commission's dogged pursuit of the widest possible dispersion of station owners has a perverse effect of assuring that no group owner can become strong enough to establish an independent voice separate and apart from the networks." 1984 Multiple Ownership Report, 100 F.C.C.2d. at 35 ¶ 58. Here, the Commission's dogged pursuit of ownership diversity has prevented other local stations from establishing new local newscasts separate from the network affiliates. Without action to permit stations to overcome the significant local news entry barriers highlighted above, Tribune submits that newscasts produced by competing stations, which do not provide viewers with a new source of local television news programming, will be the best the over-the-air viewers will get from the marketplace. One way to help overcome these entry barriers is to liberalize the Rule. As demonstrated in the next section, Tribune has created significant video news programming efficiencies for cable viewers -- efficiencies that could help to overcome the entry barrier to the start-up of new local television news broadcasts.

2. The Rule and Its Waiver Policy Stifle Efficiencies That Could Significantly Enhance Local News Programming Diversity.

Despite the Commission's absolute prohibition on creating new television-newspaper combinations and its unmistakable chill on developing synergies between existing television-newspaper combinations, Tribune has been at the forefront of developing efficiencies between newspapers and other video programming outlets — most notably cable news channels. These efficiencies include taking the extensive content generated by a newspaper and translating it into new local video news programming that would be unavailable but for the relationship between the newspaper and the video outlet. Despite the fact that these combinations present no threat to competition in the marketplace of ideas given the variety and sheer number of outlets in the largest media markets, this new video news programming has been artificially walled off from over-the-air television viewers by the Commission's rigid Rule and waiver policy. Ironically, the Commission's Rule and waiver policy have penalized over-the-air viewers by creating a news and information shortfall between cable subscribers and those that do not or cannot subscribe -- a result seemingly at odds with the Commission's interest in enhancing news and public affairs programming diversity for all Americans. Given the miniscule threat to competition in the marketplace of ideas posed by these combinations and the significant benefits that these combinations can produce -- benefits described more fully below, Tribune submits that the Commission must liberalize its waiver policy in the largest media markets.

Driven in part by the recognition that consumers were increasingly demanding news and information outside of the traditional daily newspaper delivery mechanism, Tribune invested several million dollars in 1992 to create CLTV — an all-news twenty-four-hour-a-day cable channel in the Chicago area. Tribune's objective was to expand the reach of its extensive newspaper content and develop newspaper-video synergies. One of CLTV's innovative features was its electronic link to the newsroom of the Chicago Tribune, where Tribune reporters could be interviewed by CLTV anchors about current stories and events they were covering.

Tribune's goal was no small one. Given the very stark differences between the cultures of newspapers and video news outlets, there was considerable doubt that the newspaper's content could ever be successfully translated to a video format.

CLTV has evolved into a model of programming efficiency in which the depth of knowledge and extensive resources of the Chicago Tribune and its staff are converted into new, enhanced video news programming for an entirely new audience — an audience that increasingly relies less on daily newspapers for its news and information. The programming synergy developed between CLTV and the Tribune is extensive — ranging from the immediate availability of Tribune beat writers with extensive subject matter knowledge to enhance the coverage and explain the significance of breaking news stories to the sharing of the newspaper's investigative news stories that are adapted and produced for video news exhibition as well. For example, in just the past few weeks, Tribune content has been used to enhance and support CLTV's news programming in the following ways:

- The Tribune foreign editor provided in-depth analysis to CLTV's coverage of the Indonesian financial crisis as well as the nuclear testing in both India and Pakistan;

- The Tribune environmental reporter provided a new slant to CLTV's coverage of Commonwealth Edison's recent struggles to meet the electricity demands brought on by a recent heat wave by tracing the local utility company's nuclear-power plant missteps in previous years leading to the capacity crunch;

- The Tribune arts writer provided immediate comment and analysis from the artistic community's perspective of the Supreme Court's recent decision on NEA funding;

- The Tribune telecommunications reporter provided immediate analysis and additional detail to supplement CLTV's coverage of the proposed merger between AT&T and TCI;.

- The Tribune helped create video versions of an extensive two-year investigative report it published documenting the financial practices of several child-sponsorship organizations.

CLTV also features regular appearances by a number of Tribune columnists and writers who prepare video versions of their popular columns or features, including Daily Business Reports, Theatre Reports, Movie Reviews, Restaurant Reviews, a Computer Connection Feature, a local community-affairs calendar, TV Reviews, Entertainment Reviews, and regular segments on local High-School Sports. Finally, CLTV features Tribune reporters on a number of thirty-minute programs including: the "Chicagoland Journal," a local issues-oriented program featuring various Tribune reporters highlighting local issues, news or concerns in communities they cover on a daily basis for the newspaper; "Good Eating," featuring reporters and segments adapted and enhanced from the Tribune's weekly Good Eating section; "Jobs Plus," featuring Tribune's employment columnist plus segments on employment trends and careers featured in the Tribune; and "Making Money," featuring Tribune business reporters discussing stories they have covered in the past week.

For Tribune, this new video programming makes eminent economic sense by capitalizing on the extensive content-generation resources of its daily newspaper and reformatting it for video distribution. The Chicago Tribune's news operation has a staff more than ten times the size of CLTV's news department and five times the size of WGN-TV's news department. While the news departments of video-programming outlets typically rely on small news teams and general-assignment coverage for the bulk of their reporting, the Tribune's news staff includes suburban bureaus and focused beat coverage in a wide variety of topics and specialty areas that naturally generate extensive local expertise and experience. The costs of replicating this information-gathering network for a video-programming outlet such as CLTV or WGN would be prohibitive. Instead, Tribune's common ownership and willingness to make a significant long-term capital investment lead to the creation of new local video programming using newspaper content.

CLTV is not simply today's edition of the Tribune on television. Nor is it the Chicago Tribune's editorial perspective brought to a cable-television audience. It is first and foremost a professionally produced, independently-created television news product with an independent editorial perspective. This separation has been essential to the success of CLTV. Based on its extensive experience in both the television and newspaper businesses, Tribune recognized the very different nature of their news products and the need to create a separate management team of television news managers focused on adapting newspaper content, where appropriate, into a format that worked for the video-programming viewer. What is significant about CLTV is that it is a television news product that draws upon the immense depth and local content developed by the Chicago Tribune's journalists. CLTV takes that content and converts it in a variety of ways to local television news programming that would not otherwise be available.[51]

Following the successful launch of CLTV, Tribune took another step at pioneering cross-media efficiencies by investing several million dollars to create its Washington, D.C., Media Center — a state-of-the-art news gathering facility that combines the Washington

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[51] The Chicago Tribune recently invested over $1 million to expand its video-programming creation capacity and enhance its ability to share that content beyond CLTV to WGN -TV and Tribune's other television stations. This investment, like the original investment in CLTV, is designed to further expand the reach of Tribune's content.

bureaus of its television stations and newspapers. Once again, the objective was to begin to share and expand the use of the content that these bureaus traditionally created exclusively for the television or newspaper groups and to identify ways in which the content creation process could be improved and enhanced by sharing resources. After overcoming the same institutional concerns among employees in the two bureaus, the Media Center has evolved into another model of newspaper-television efficiency. It employs a 2-to-1 ratio of newspaper and broadcast reporters/editors who regularly collaborate and share information about developing news stories. Both print and broadcast personnel regularly participate in each other's editorial meetings. The chief broadcasting and print editors sit at a joint news desk where they can easily communicate about breaking news and events. This combination has resulted in several instances in which a television employee and a print reporter have shared byline credit for stories originally developed to cover one angle of a news story on television and then further refined or expanded for publication in a Tribune newspaper story. Similarly, several Tribune print reporters have done their own stories for Tribune television.

Like CLTV, the Media Center capitalizes on the expertise and knowledge of Tribune's newspaper writers who regularly provide additional depth and insight to the news coverage provided to the viewers of CLTV and Tribune's twelve television news departments. This synergy has allowed Tribune to provide a new independent source of national news coverage to the viewers in its markets. In addition, this combined media presence also permits Tribune to enhance and even localize this national news coverage for its television stations by adding interviews with local Congressmen to supplement a basic news story or allowing one of the Tribune print reporters to provide additional depth and insight on a story of particular interest to a

Tribune television community. In addition, Tribune's Washington, D.C. reporters prepare a weekly D.C. Journal segment for CLTV that typically converts, refines and supplements for video presentation a recent newspaper story they prepared.

Precluded by the Rule from pursuing those efficiencies at a local over-the-air station, Tribune's daily newspaper in Orlando, the Orlando Sentinel, recently joined forces with Time Warner to launch late last year the Central Florida News Channel ("CFN"), a new 24-hour-a-day cable news channel. Like CLTV, CFN captures the extensive content and depth of a daily newspaper and converts that information to video news programming. Like CLTV, CFN also has its own news management team that separately exercises editorial control over the use and placement of Sentinel content in CFN's news programming. Finally, like CLTV, this combination provides new local news programming that would otherwise not be available to local viewers. Unfortunately, this new local news programming is available only to Orlando's cable viewers.

Tribune notes that it is not the only news organization recognizing the benefits from revising and extending its print content across various media. CNN recently launched its NewsStand video news-magazine series seeking to expand the reach of some of Time Inc.'s most popular magazines, Time, Fortune and Entertainment Weekly. See "CNN's busy NewsStand," Electronic Media, June 1, 1998. CNBC and the Wall Street Journal recently announced the completion of a formal programming alliance that gives CNBC on-air access to Wall Street Journal reporters, internal story conferences, and advance access to stories running on the Dow Jones Newswires and in Dow Jones' financial magazines. "CNBC Plans Close Ties to WSJ," Cowles-SIMBA Information Media Daily, April 28, 1998; "Synergy at CNBC, Dow

Jones," Electronic Media, April 27, 1998. A June 1998 survey of Internet usage confirmed that 15 of the 28 most popular websites were maintained by major media companies or networks, including (in order of popularity) MSNBC, ESPN, Disney, CBS Sports, ABC News, CNNSI, The Washington Post, The New York Times, CNNFn, ABC, NBC and CBS.[52]

Tribune submits that the Commission can no longer afford to deprive over-the-air viewers the benefits of these new programming efforts. Tribune emphasizes that success in these ventures is in no way guaranteed simply by having access to a newspaper's or a magazine's content. As the President of Time, Inc./CNN Productions recently observed: "You can't just take a print medium and put that on the air. You have to be true to the brand name and mission, but also be true to television." "Print and TV Move Under a Single Roof," Christian Science Monitor, April 3, 1998, at B7. Tribune's experiences at CLTV and the Media Center confirm the observation of the managing editor of Sports Illustrated that print reporters have to take the "thoughtful perspective of the magazine and learn to make good television." Id.

Free from the constraints of the Rule with respect to cable television ventures, Tribune has developed the ability to take the content of a newspaper and convert it into "good cable television" news programming. Tribune has had less success bringing these same efficiencies to over-the-air television. Several of its newspapers currently participate in informal alliances with independently owned television stations serving the same market. Unlike Tribune's cable ventures, which involved substantial, long-term financial commitments by a committed

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[52] "RelevantKnowledge ranks the sites," Broadcasting & Cable, July 13, 1998 at 51.

common owner and that resulted in the creation of substantial amounts of new local video news programming, these informal over-the-air television alliances typically involve almost no up-front capital investment and can be terminated on very short notice. Because the newspaper has no incentive to make any kind of a long-term investment in developing an audience for a television station that does not already have a newscast, the alliances involve well-established stations with established news departments. Because of their informal, indefinite nature, the alliances produce far fewer instances of new local news programming. While the benefits produced by those alliances are important, they do not begin to approach the benefits that a common owner could achieve if committed to starting a new television news broadcast enhanced by the resources of a daily newspaper. Tribune submits that such an undertaking could only occur if the newspaper is permitted to own the station involved.

3. The Commission Should, at a Minimum, Liberalize its Rule or the Waiver Policy in the Largest Markets.

Tribune submits that it is time for the FCC to eliminate the obstacle created by the Rule and the waiver policy preventing the realization of these same local news programming efficiencies in the over-the-air industry. As noted above, more and more media companies are expanding the use of their content across different media to create new and innovative products. The question for the Commission is whether over-the-air viewers should continue to be deprived of these new products.